

DISTRICT COURT OF MITROVICË/MITROVICA

P No. 06/09

15 July 2010

IN THE NAME OF THE PEOPLE

THE DISTRICT COURT OF MITROVICË/MITROVICA, in the trial panel composed of EULEX Judge Hajnalka Veronika Karpati, as presiding judge, EULEX Judges Charles L. Smith, III and Nikolay Entchev as panel members, with the participation of EULEX Legal Officer Zane Ratniece, as recording officer, in the criminal case against:

A.A., charged, according to the Indictment of the District Public Prosecutor PP. No. 112/08, dated 13 January 2009, and filed with the Registry of the District Court of Mitrovicë/Mitrovica on 14 January 2009, with the criminal offence of **Attempted Aggravated Murder**, contrary to Article 147 Item 4 of the Criminal Code of Kosovo (CCK) as read with Article 20 of the CCK;

After having held the main trial hearings open to the public on 12, 13, 14 and 15 July 2010, all in the presence of the Accused **A.A.** his Defence Counsel **M.H.**, EULEX Public Prosecutor Neeta Amin, Injured Parties **B.A.**, **C.A.** and **D.A.** (except the afternoon session on 14 July), their Authorized Representative **B.B.**, after the trial panel's deliberation and voting held on 15 July 2010, pursuant to Article 392 Paragraph (1) of the Criminal Procedure Code of Kosovo (CPCK), pronounced in public and in the presence of the Accused, his Defence Counsel, the EULEX Public Prosecutor, the Injured Parties and their Authorized Representative the following

JUDGMENT

The accused **A.A.**, son of **E.A.** and **K.S.**, born on **...**, in **H.** Village, Municipality of **V.**, Kosovo Albanian, residing in **H.** Village, Municipality of **V.**, completed high school, labourer, of poor economic status, married with four children, previously convicted of the criminal offence of Forging a Document and sentenced by a fine, in detention between 20 October 2008 and 20 March 2009, and since 20 March 2010;

Is

FOUND GUILTY

A) **because** on 20 October 2008 at around 20:30 hours, in H. village, Municipality of Vushtrri/Vučitrn, in his house the accused with the intention to kill, attacked his wife with a penknife who, with the help of his sons, managed to flee to the house of her brother in law F.A. . The accused followed his wife and in the house of F.A. the accused continued the attack on his wife with the knife whereby he caused her cut wounds on the head and on both shoulders before he was stopped by his son C.A. and by his brother F.A.

By doing so, the accused A.A. committed and is criminally liable for the criminal offence of

Attempted Murder contrary to Article 146 as read with Article 20 of the Provisional Criminal Code of Kosovo (PCCK).

B) **because** the accused on 20 October 2008 at around 20:30 hours, in H. village, Municipality of Vushtrri/Vučitrn, in his house and in the house of his brother F.A. caused cut wounds to the right shoulder and the upper inner side of the right thigh to his son C.A. who tried to protect his mother B.A. from the attack under count A).

By doing so, the accused A.A. committed and is criminally liable for the criminal offence of

Light Bodily Injury contrary to Article 153 Paragraph (4) as read with Paragraph (2) and Paragraph (1) Item 1) of the PCCK.

The accused A.A. is

SENTENCED

- to eight (8) years of imprisonment for the criminal act of Attempted Murder / count A)
- to two (2) years of imprisonment for the criminal act of Light Bodily Injury / count B).



The aggregate punishment is determined as nine (9) years of imprisonment, pursuant to Article 71 Paragraph (1) and Paragraph (2) Item 2 of the PCCK.

The time spent in detention on remand between 20 October 2008 and 20 March 2009 and since 20 March 2010 is to be credited pursuant to Article 73 Paragraph (1) of the PCCK.

The accused A A. shall reimburse the costs of criminal proceedings pursuant to Article 102 Paragraph (1) of the CPCK with the exception of the costs of interpretation and translation. A separate ruling on the amount of the costs shall be rendered by the court when such data is obtained pursuant to Article 100 Paragraph (2) of the CPCK.

REASONING

I. PROCEDURAL HISTORY

1.1. *Indictment*

On 14 January 2009, the District Public Prosecutor for Mitrovicë/Mitrovica Xhevdet Bislimi filed the Indictment PP No. 112/08, dated 13 January 2009, with the Registry of the District Court of Mitrovicë/Mitrovica.

According to the Indictment the accused A A. was charged with the criminal offence of Attempted Aggravated Murder under Article 147 Item 4 as read with Article 20 of the CCK. The Indictment was confirmed on 29 March 2010.

II. JURISDICTION OF THE COURT

2.1. *Subject matter and territorial jurisdiction*

According to Article 23 Paragraph (1) of the CPCK, a district court shall have jurisdiction to adjudicate at first instance a criminal offence punishable by imprisonment of at least five years or by long-term imprisonment. The charged criminal offence of Attempted Aggravated Murder allows imprisonment of at least five years.

Therefore, the District Court of Mitrovicë/Mitrovica has subject matter jurisdiction over the case.

The charged criminal offence of Attempted Aggravated Murder was allegedly committed in the Village, Municipality of Vushtrri/Vučitrn.¹

Therefore, pursuant to Article 27 Paragraph (1) of the CPCK, the District Court of Mitrovicë/Mitrovica has also territorial jurisdiction over the case.

2.2. *Jurisdiction of EULEX judges*

Article 3.3 of the Law No.03/L-053 'On the Jurisdiction, Case Selection and Case Allocation of EULEX Judges and Prosecutors in Kosovo' states that in cases of subsidiary competence, EULEX judges can take over a case upon appointment by the President of the Assembly of EULEX judges. On 14 October 2009, the President of the Assembly of EULEX judges, upon the petition of the EULEX Prosecutor, decided to assign to the case EULEX judges of Mitrovicë/Mitrovica District Court. The EULEX judges of Mitrovicë/Mitrovica District Court were assigned to the case also in view of Article 3.5 of the Law No.03/L-053 in order to ensure the proper administration of justice.

III. APPLICABLE LAW

3.1. *Applicable substantive law*

The charged criminal offence of Attempted Aggravated Murder was allegedly committed on 20 October 2008. The substantive law applicable to the case is the one in force at the time, when the criminal offence was committed.

The accused pursuant to the Indictment PP No. 112/08 was charged according to the Criminal Code of Kosovo (CCK). The code was renamed CCK with effect from 06 January 2009, which is *after* the accused had allegedly committed the charged criminal offence. At the time the accused committed the criminal offence, on 20 October 2008, the code was titled the Provisional Criminal Code of Kosovo (PCCK), adopted with the UNMIK Regulation 2003/25, which entered into force on 06 April 2004.

The CCK as compared to the PCCK is not more favourable in particular case. Therefore, even though the Indictment charged the accused according to the CCK, the trial panel applied the PCCK.

¹ Indictment PP No. 112/08, dated 13 January 2009

3.2. *Applicable procedural law*

The applicable procedural law is the one, which is in force at the time when the proceedings are conducted. At the time of the court proceedings in force has been the Criminal Procedure Code of Kosovo (CPCK). Therefore, the court followed the procedure pursuant to CPCK.

IV. SUMMARY OF THE EVIDENCE PRESENTED

4.1. The following persons were examined as witnesses during the course of the main trial:

- 1) Injured party B.A., wife of the accused, on 12 July 2010;
- 2) Injured party C.A., son of the accused, on 12 July 2010;
- 3) Injured party D.A., son of the accused, on 12 July 2010;
- 4) F.A., brother of the accused, on 13 July 2010;
- 5) G.A., wife of the accused's brother F.A., on 13 July 2010;
- 6) H.A., son of the accused's brother F.A. and his wife G.A., on 13 July 2010;
- 7) Dr. R.R., on 14 July 2010;
- 8) Dr. S.S., on 14 July 2010.

4.2. The following witness testimony was read on 13 July 2010:

- 1) E.A., father of the accused, deceased, his testimony given before Kosovo Police Service, on 22 October 2008, case number 2008-.

4.3. The following witnesses testimonies and evidence were presented by the EULEX Public Prosecutor during the course of the main trial:

- 1) Statement of the injured party B.A. before Kosovo Police Service, on 20 October 2008, case number 2008- ;
- 2) Statement of the injured party C.A. before Kosovo Police Service, on 20 October 2008, case number 2008- ;
- 3) Statement of F.A. before Kosovo Police Service, on 20 October 2008, case number 2008- ;
- 4) Medical report for C.A., number , dated 31 August 2009, issued by Dr. R.R. ;
- 5) Referral to specialist doctor for C.A., dated 20 October 2008, signed by Dr. R.R. and Dr. S.S. ;
- 6) Medical report for B.A., number , dated 31 August 2009, issued by Dr. R.R. ;

7) Referral to specialist doctor for B.A., dated 20 October 2008, signed by Dr. R.R. and Dr. S.S.

4.4. The following documents were put forward to be used as evidence by the EULEX Public Prosecutor, and have been considered as read out based on agreement by the parties:

- 1) Psychiatric report for A.A., from Department of Psychiatry of the University Clinical Centre of Kosovo, dated 09 January 2009 (psychiatric examination conducted based on the order of Mitrovicë/Mitrovica District Court 17 November 2008);
- 2) Psychiatric report for A.A., from Clinic of Psychiatry of the University Clinical Centre of Kosovo, dated 17 June 2010 (psychiatric examination conducted based on the order of Mitrovicë/Mitrovica District Court 29 April 2010);
- 3) Initial / Incident Report, dated 20 October 2008, case number 2008-., reference number ;
- 4) Forensic identification report, dated 20 October 2008;
- 5) Investigation report, dated 21 October 2008, by Officers and . ;
- 6) Police officer's report, dated 20 October 2008, by Officer ;
- 7) Police officer's report, dated 20 October 2008, by Officers and ;
- 8) Report on the crime scene, dated 20 October 2008, by Officer ;
- 9) Sketch plan of the crime scene, dated 20 October 2008, case number 2008 , by Officer ;
- 10) Photo album number 08-., dated 20 October 2008, by Officer , including description of the photographs and the photographs.

V. ASSESSMENT OF THE PRESENTED EVIDENCE

5.1. *Factual findings*

Based on the evidence presented during the course of the main trial, the court considered the following facts as proven:

On 20 October 2008, at around 20:30 hours, in H. Village, Municipality of Vushtrri/Vučitrn, the accused A.A., his wife B.A. and their sons C.A. and D.A. were sitting in the living room of their house. The accused A.A. started to assault his wife B.A. and suddenly pulled out of his

pocket a penknife. The accused with intention to kill his wife tried to hit her with the penknife, but their sons C.A. and D.A. intervened to protect their mother from the attack. B.A. escaped from the house and ran to the neighbouring house of F.A., who is the accused's brother. The accused A.A. and C.A. were following B.A. to the house of F.A. B.A. ran into the house of F.A. screaming and asking for help, where F.A., his wife G.A., and their son H.A. were present. Also, C.A. and A.A. were following, with C.A. trying to protect his mother. Before F.A. managed to intervene, the accused continued the attack on his wife with the penknife. The accused in the attack on his wife caused her with the penknife cut wounds on the head and both shoulders. The accused also caused cut wounds to the right shoulder and the upper inner side of the right thigh to his son C.A., who tried to protect his mother from the attack. The accused's brother F.A. intervened, and together with C.A. they grabbed the accused and held him. B.A. went upstairs in the house of F.A. Then A.A. asked to let him go. As he was leaving, he met G.A., wife of F.A. The accused asked G.A. where B.A. was. To this G.A. responded that B.A. had run away outside. A.A. left and went straight back to his house, where his son D.A. served him tea.

5.2. Evidence establishing the factual findings

a. The injured party B.A. was examined as a witness at the main trial hearing on 12 July 2010. She testified that already during the day of 20 October 2008 her husband A.A. was anxious and nervous, and was shouting at her and children, because he could not find a marriage certificate.² After the dinner their son C.A. came home. The accused started asking about the missing marriage certificate C.A., who replied that it was at the municipality. The situation aggravated and A.A. tried to hit his wife, but was stopped by their two eldest sons.³ B.A. left the house and went to the house of F.A. (the accused's brother). Also A.A. came there and used the penknife on her, by hitting on her head and shoulder. C.A. was always trying to protect B.A., and was hit with the penknife as well. The penknife according to B.A. could have been approximately 10 centimetres long when unfolded.⁴ At the main trial hearing the injured party B.A. confirmed her **Statement before Kosovo Police Service**, on 20 October 2008, case number 2008-⁵, where

² Minutes of the main trial session 12 July 2010, pp.8, 17 (in English language)

³ *ibid.*, pp.9, 10

⁴ *ibid.*, pp.10, 11, 19

she had stated that already at their house A.A. pulled out a knife from his pocket and tried to attack her with the knife.

b. The injured party C.A., when questioned at the main trial hearing on 12 July 2010, partly corroborated the statement of his mother B.A. He confirmed that he was present at home on 20 October 2008, together with his father A.A. and mother B.A. On that day his father was angry because he could not find a marriage certificate, and was shouting about it. At around 20:30 hrs. A.A. pulled out a knife, with the blade of 5-6 centimetres, and tried to attack B.A., but C.A. together with his brother D.A. were trying to protect their mother from the attack.⁵

During examination at the main trial hearing C.A. contradicted the testimony of his mother by stating the following: His father A.A. used the knife against his mother only at their home (as described above); Some of the injuries to his mother were caused because she slipped on the stairs; The injuries to B.A. were caused partly by the accused A.A. and partly by him and his brother D.A. Even though at the main trial hearing C.A. admitted that his father had injured also him, he stated that this was done not with a knife, but by punching with hand.⁶ The trial panel considered that testimony of C.A. in this part that contradicted the testimony of B.A. was not credible based on the following:

- The **Medical report** for C.A., number , dated 31 August 2009, issued by Dr. R.R. and the **Referral to specialist doctor** for C.A., dated 20 October 2008, signed by Dr. R.R. and Dr. S.S., clearly indicated that C.A. had sustained cut wounds to the shoulder and the upper inner side of the thigh. Therefore, the trial panel considered that injuries to C.A. were caused by A.A. with the same knife, which A.A. was attacking his wife with, and not with hand as claimed by C.A. at the main trial hearing on 12 July 2010.
- The witnesses F.A. and G.A. testified at the main trial hearing on 13 July 2010, that on 20 October 2008, at around 20:40 hrs, B.A. came to their house, followed by C.A. and A.A. Both witnesses confirmed that at their house A.A. used the knife against B.A., they also confirmed that C.A. was there protecting his mother from the attack.⁷ Therefore, the trial panel concluded that A.A. continued the attack on B.A. outside their house, at the house of his brother F.A.
- In the **Statement before Kosovo Police Service**, given on 20 October 2008, case number 2008- , C.A. had clearly testified that his father A.A.

⁵ ibid, pp.25-28, 32

⁶ ibid, pp.28-30, 37

⁷ Minutes of the main trial session 13 July 2010, pp.4-6, 12, 18-20 (in English language)

had assaulted him and his mother, and had stabbed them. The following was stated by C.A. : 'He stabbed me, as I was trying to protect my mother. He stabbed me twice.' Even though at the main trial hearing on 12 July 2010 C.A. was saying that this statement was not completely true, the trial panel deemed it reliable. Because this statement was given by C.A. shortly after the incident, and it was clearly supported by other evidence in the file.

c. The injured party D.A. testified at the main trial hearing on 12 July 2010.

D.A. denied that he had been present at home on 20 October 2008 when the incident occurred. He stated that he came home only after the incident had finished.⁸ This statement contradicted the testimony of B.A. and C.A. They both confirmed that D.A. had been present at home, and while A.A. was attacking B.A. at their home, both C.A. and D.A. were trying to protect their mother from the attack. Therefore, the trial panel was of the opinion that irrespective of D.A. denying his presence at the time of incident at home, he was present there, and together with his brother C.A. was protecting their mother from the attack. At the main trial hearing on 12 July 2010 D.A. testified that he had learned from his family members about the incident. He was told that his father A.A. had become nervous and assaulted his mother and brother C.A. Further, he was told that A.A. had attacked his mother with a knife. D.A. testified that after the incident he met his brother C.A., who told him that their father had injured him on his arm and leg with a knife, while he was protecting his mother. D.A. had seen before the penknife, that A.A. used during the incident, and it was 15-20 centimetres long, including the blade. Further, D.A. testified that after the incident had happened, he came home, where there was his father. According to D.A., his father was calm and he served him tea.⁹

d. The witnesses F.A. and G.A. testified at the main trial hearing on 13 July 2010,- they and their son H.A. were at home on 20 October 2008. At around 20:40 hrs B.A. entered their house asking for help. C.A. and A.A. were following. F.A. testified that in that moment C.A. was between his father A.A. and mother B.A. The witness F.A. stated that 'if it had not been for him (C.A.)...' When asked to clarify these words, the witness F.A. completed that 'if it had not been for C.A., it would have been worse'. He also confirmed that on that night his brother A.A. was in a dangerous mood.¹⁰ Before F.A. managed to grab the accused,

⁸ Minutes of the main trial session 12 July 2010, pp. 38, 39 (in English language)

⁹ ibid, pp. 39, 40, 41-44

¹⁰ Minutes of the main trial session 13 July 2010, pp. 6, 14, 15 (in English language)

he injured B.A. with a knife on her head. F.A. and C.A. managed to grab A.A. B.A. went upstairs in the house of F.A. and G.A. A.A. was asking to let him go. While A.A. was leaving, he met G.A., whom he asked where his wife was. G.A. replied that B.A. had run outside. G.A. confirmed that after the incident she saw bleeding injuries on the head and shoulder of B.A., caused by A.A. in attack on his wife with a knife.¹¹

e. H.A. (born in 1991), the son of F.A. and G.A., at the main trial hearing on 13 July 2010 confirmed that he was present, when B.A. entered their house, saying that her husband wanted to attack her. After B.A., C.A. and A.A. followed. H.A. testified that at that moment he left the house.¹² The same was stated by his mother G.A.

With respect to testimonies that were given by the injured parties and the witnesses at the main trial hearings on 12 July and 13 July 2010, the trial panel observed that, in some parts they withdrew from their statements, given shortly after the incident on 20 October 2010 before Kosovo Police Service, or they contradicted with their other statements given at the main trial. This change in statements was more favourable to the accused A.A.:

- B.A. at the main trial hearing on 12 July 2010 testified that she could not remember, whether her husband A.A. was saying anything while trying to attack her. However, after the incident, on 20 October 2008, B.A. testified before Kosovo Police Service the following: "A.A. stood up and tried to punch me and then he pulled out a knife from his pocket and tried to hit me with it. But as the children, who were present, screamed, he shouted to the children by telling them: 'You shut up or I will tear your mouths.'" When asked at the main trial hearing once again, whether these words were said by the accused, B.A. replied that 'perhaps', but still she 'could not remember'.
- When examined by the EULEX Public Prosecutor at the main trial hearing on 12 July 2010, B.A. replied that A.A. has not been violent towards her or children before the incident of 20 October 2008. He was only nervous, and shouted now and then, but did not harass anyone. This statement clearly contradicted what B.A. said on 20 October 2008 before Kosovo Police Service. There she testified that her husband A.A. for more than two years has been violent towards her. She testified that he never leaves them alone, and

¹¹ ibid, pp. 4-7, 17-21

¹² ibid, pp.26-28

they had cases reported to the Police earlier, and there were many more cases that were never reported. B. A. also confirmed that she is afraid to live with her husband, she does not feel safe, and her husband always threatens that he is going to kill her. However, at the main trial hearing, when examined by the EULEX Public Prosecutor, B. A. stated that she now feels differently. And, when asked by her Authorized Representative, she replied that now she has reconciled with her husband, and wants to live with him, and does not want her husband to be convicted.

- C. A. at the main trial hearing on 12 July 2010 assured that he has known his father A. A. as a good father and now they are thinking of continuing to live together. However, on 20 October 2008, C. A. testified to Kosovo Police Service that it happens that accused attacks everyone, he is dangerous, and they feel endangered, and that there is no chance to live together with his father in the future.
- F. A. throughout his testimony at the main trial hearing on 13 July 2010, when describing the attack by A. A. on B. A. with a knife, constantly used the words that A. A. had 'touched' B. A. with the knife. Whereas, in his testimony before Kosovo Police Service, on 20 October 2008, F. A. said that accused had managed to 'stab' B. A. on her head. Later at the main trial hearing, when F. A. was asked to clarify, whether A. A. 'touched' his wife with the knife or 'stabbed' her, F. A. said 'stabbed'.
- On 20 October 2008, before Kosovo Police Service F. A. stated that during the incident A. A. had said that he is going to buy a gun and kill them all. However, at the main trial hearing on 13 July 2010, he could not remember that A. A. had said this. At the same time, when asked whether everything he had said before Kosovo Police Service was true, F. A. replied 'yes'.
- Also, on 20 October 2008, before Kosovo Police Service F. A. stated that this was not the first time that A. A. is causing problems to his family. F. A. mentioned that he had not visited them for 6-7 months as there was no chance to talk to them. At the main trial hearing, first, F. A. assured that before the incident on 20 October 2008 they did not have any problems. When the EULEX Public Prosecutor confronted F. A. with his statement before Kosovo Police Service, F. A. explained that there had been only the incident of 20 October 2008 and another smaller incident.

The trial panel found two reasons, why more mitigating approach towards A. A. was adopted by the injured parties and witnesses during the main trial hearings:

- The brother of the accused F.A. in his testimony at the main trial hearing on 13 July 2010 characterized A.A. as a calm man, but 'if you bothered him, he would not tolerate it'. He also characterized A.A. as being dangerous when A.A. is upset. F.A. confirmed that on 20 October 2008, at the time of incident, A.A. was in a dangerous mood. F.A. also stated that he has tried to be careful with A.A. and not to quarrel with him. He had also advised B.A. to try to keep the problems away. He also mentioned that 'if you lie or bother him (A.A.), you will kill each other in a minute'.¹³

From the testimony of B.A., given at the main trial hearing, it followed that she and the children were staying away from A.A.. The son of the accused D.A. confirmed that his father loses temper quickly.¹⁴

Furthermore, the accused A.A. was convicted by the Municipal Court of Vushtrri/Vučitrn on 09 February 2010 of the criminal offence of Light Bodily Injury perpetrated on his son, injured party C.A. on 18 December 2009. Therefore, after the incident on 20 October 2008, A.A. had again attacked his family member. As explained by D.A. at the main trial hearing on 12 July 2010 he was also present when his father injured his brother C.A. on 18 December 2009. This was done by A.A. because he had given his son C.A. a bank card to withdraw money at a cash machine. But C.A. did not know the PIN number, so the card remained in the machine, about what their father became nervous. As added by C.A., during the incident on 18 December 2009, his father also pulled his mother by her hair, as she was trying to protect C.A..¹⁵

The above stated indicates that accused A.A. is short tempered, aggressive, and has been violent towards his family on various occasions. Therefore, the trial panel is of the opinion that his family members during the main trial did not feel safe to confirm their initial statements and to describe their relations with the accused in general, all this while in presence of the accused A.A. at the courtroom. This is also because in case A.A. was released from detention or custody, they may be put at a risk for what they had said before the court. For these reasons the trial panel was convinced that statements of the injured parties and witness F.A. as given before Kosovo Police Service on 20 October 2008, after the incident, were reliable.

¹³ ibid, pp.9, 10, 15

¹⁴ Minutes of the main trial session 12 July 2010, pp.12, 44 (in English language)

¹⁵ ibid, pp.44, 34

- At the main trial hearing on 12 July 2010, C. A. testified that his father A. A. has been the main provider in the family, that he was looking after his family, and ensuring everything for living. While his father has been in detention on remand, no one looked after them. There are four children in the family and they have no income at all, and they survive from what A. A. left prior his detention.¹⁶ D. A. stated that their father is head of the family and if their father were to be convicted the family would be in a very hopeless situation with no where to go. Neither his brother C. A. nor he is working, and they would have no other means of survival.¹⁷

Also the accused A. A. stated that while he has been in detention he was told that his family is struggling, and has borrowed money, and he is wondering how they will continue to survive.¹⁸

Based on the above mentioned the trial panel considered that more mitigating approach towards circumstances of the incident of 20 October 2008 and description of situation as to A. A., was adopted by their family members, because they depend on him financially. If A. A. were convicted, that would leave his family in a rather difficult economic situation. So, it is possible that also this was the reason, why his family members during the main trial changed their statements. For this reason, the trial panel disregarded these changes in their statements and took into consideration the statements as given on 20 October 2008.

f. The testimony of the father of the accused E. A. given before Kosovo Police Service on 22 October 2008, case number 2008- was read out at the main trial hearing on 13 July 2010. This was done based on Article 368 Paragraph (1) Item 1) of CPCCK, as before the start of the main trial E. A. had passed away. In his testimony E. A. had *inter alia* stated: 'That night I was asleep and they called me and told me that A. A. wants to kill us. I woke up and asked him: 'What happened, A. A.?' He grabbed me and pushed me. A. A. is aggressive towards family whereas in regards with the surroundings (people around him) he is really very well behaved.' The testimony of E. A. therefore corroborated the statement of injured parties that on the evening of 20 October 2008 A. A. had attacked them at their home. It also confirmed the general characteristics of A. A., as being aggressive towards his family.

¹⁶ *ibid.*, p.34

¹⁷ Minutes of the main trial session 15 July 2010, p.5

¹⁸ *ibid.*

g. The **Referral to specialist doctor for** B.A., dated 20 October 2008, signed by Dr. R.R. and Dr. S.S., and the **Medical report for** B.A., number , dated 31 August 2009, issued by Dr. R.R.,- identified that on 20 October 2008 B.A. was treated at the hospital in Vushtrri/Vučitrn. It was provided in both documents that B.A. had cut wounds in the region of forehead, in the region of shoulder blade and in the region of left shoulder. The wounds were treated with stitches.

Dr. R.R. was the first to examine B.A. on 20 October 2008, he further referred her to the surgeon Dr. S.S., who then treated the wounds. At the main trial hearing on 14 July 2010 Dr. R.R. confirmed that B.A. had wounds, which had been caused by a sharp object, and a possibility that these wounds had been caused by the victim herself was excluded, and these injuries were not typical to be caused by falling.¹⁹

Therefore, the medical reports and testimony of Dr. R.R. corroborated the statement of B.A. that her husband had stabbed her with the knife, and corroborated the statements of witnesses F.A. and G.A. that A.A. had attacked B.A. with the knife. It also supported the initial statement of the injured party C.A. given before Kosovo Police Service on 20 October 2008 that his mother was stabbed by A.A. Therefore, it also rendered not credible a later change in the statement of C.A. during the main trial hearing on 12 July 2008, that injuries to B.A. were caused because she slipped on the stairs.

Further, Dr. S.S. at the main trial hearing on 14 July 2010 described that even if the injury on the head of B.A. itself was not dangerous, its location was. As one example, he explained that if it was for the knife to hit in another part close to the injury on head, it could also have been an artery on the neck which is 6 millimetres from the skin.²⁰

h. The **Referral to specialist doctor for** C.A., dated 20 October 2008, signed by Dr. R.R. and Dr. S.S., and the **Medical report for** C.A., number , dated 31 August 2009, issued by Dr. R.R.,- identified that on 20 October 2008 C.A. was treated at the hospital in Vushtrri/Vučitrn. They provided that C.A. had cut wounds in the region of the left shoulder and in the region of the inner part of the thigh, and the wounds were treated with stitches. Even though the Referral and the Medical report stated that C.A. had injuries in the left region of his body, as clarified by C.A. at the main trial hearing on 12

¹⁹ Minutes of the main trial session 14 July 2010, pp.3-10, 16, 17 (in English language)

²⁰ ibid, pp.20, 21

July 2010, he sustained injuries on the right side,²¹ which could also be seen in the photos in the file (p.188 in the Prosecution evidence file).

With respect to the wounds sustained by C.A., - Dr. S.S., who treated the wounds, at the main trial hearing on 14 July 2010, confirmed that these wounds had been recorded as cut wounds.²²

Therefore, the medical reports corroborated the statement of the injured parties that C.A. had been stabbed with the knife, while protecting his mother from the attack. As it was mentioned in this Judgment above, at the main trial hearing on 12 July 2010 C.A. changed his initially given statement before Kosovo Police Service on 20 October 2008, by claiming that his father had actually punched him with hand. The medical reports as confirmed by Dr. R.R. and Dr. S.S. at the main trial hearing on 14 July 2010 rendered this change in the statement of C.A. not credible. Therefore, the trial panel took into consideration the testimony of C.A. given on 20 October 2008, where C.A. stated that his father A.A. had 'stabbed' him twice, as he was trying to protect his mother.

i. The **Forensic identification report**, dated 20 October 2008, stated that in A. Village, Vushtrri/Vučitrn Municipality, in the starting place of the incident, - in the house of A.A., there were no traces found. However, in the house of F.A., which is 100 meters away from the accused's house, - there were two (2) red stains, similar to blood, on the floor in the corridor, and also stains on the floor in the living room. By the stairs, which led to the second floor, there was one (1) red stain similar to blood, and one (1) stain on the stairs to the second floor. On the floor in the bathroom on the second floor there were red stains, similar to blood.

The above mentioned stains, similar to blood, in the house of F.A. were also captured in the photographs contained in the **Photo album** number , dated 20 October 2008. The photos number 29, 30, 31, 32 showed many stains on the floor of the bathroom.

The Forensic identification report, dated 20 October 2008, and the Photo album number , dated 20 October 2008, confirmed that B.A. and C.A. had sustained bleeding injuries. Further, the evidence corroborated the statement of B.A., witnesses F.A. and G.A., that after F.A. and C.A. managed to grab A.A., B.A. went upstairs in the house of F.A. This is because the red stains similar to blood were found on the stairs to the second floor and more stains in the second floor bathroom, which had been left there by B.A. due to bleeding injuries.

²¹ Minutes of the main trial session 12 July 2010, pp.30, 31 (in English language)

²² ibid, p.19

5.3. *Factual findings regarding alleged injury to D.A.*

The Indictment PP No. 112/08, dated 13 January 2009, alleged that while A.A. was attacking his wife at the house of F.A., he also caused injuries to his son D.A.. Regarding this allegation in the Indictment the trial panel found the following:

a. At the main trial hearing on 12 July 2010, D.A. denied being injured by his father. B.A. testified at the main trial hearing on 12 July 2010 that only C.A. followed her to the house of F.A., and that D.A. remained in their house. She also confirmed that, while at their house, D.A. did not sustain any injuries, while trying to protect her from the attack. The same was testified by C.A.

b. The injuries sustained by B.A. and C.A. were treated at the hospital in Vushtrri/Vučitrn, as provided in the Referrals to specialist doctor and the Medical reports, which also described the injuries themselves (as discussed in this Judgment above). However, with respect to D.A. there was no such similar evidence. In the **Photo album** number , dated 20 October 2008, the photographs number 33, 34 showed an injury on the left hand of D.A.. When questioned about this injury at the main trial hearing on 12 July 2010, B.A. testified that her son D.A. one or two days before the incident was working the land and was injured by using an agricultural instrument. Also, D.A. at the main trial hearing on 12 July 2010 explained that he sustained the injury while working, helping his uncle, and that this injury was caused by using a sickle.

c. The witnesses Dr. R.R. and Dr. S.S. were also presented the above mentioned photograph number 34 at the main trial hearing on 14 July 2010, and asked to describe the injury. Dr. R.R. characterized the injury in the photo number 34 as a semi-circle injury, which looked more like a scratch than a cut, perhaps with a strong object. According to Dr. R.R. the injury could have been caused 3, 4 or 5 hours ago, as the blood on the photograph had not changed the colour. Also Dr. S.S. described the injury as a scratch, because the skin was not penetrated. Dr. S.S. could not tell how old the injury was.

Therefore, in view of aforementioned, the trial panel concluded that there is not sufficient evidence that proves beyond reasonable doubt that A.A. during attack on his wife injured also his son D.A.

5.4. *Factual findings regarding mental condition of A.A.*

Throughout the main trial hearings the injured parties and witnesses mentioned that A.A. could be ill. Also, the accused's father E.A. in the testimony before Kosovo Police Service on 22 October 2008, case number 2008-111, had stated that 'it is clear that he (A.A.) is really sick now, but he does not want to admit it'. The issue of the accused's mental condition was also put forward by his Defence Counsel M.M. The accused A.A. in his final statement said that he does not know how the incident of 20 October 2008 happened and that he was not feeling well.²³ With respect to mental condition of A.A. the trial panel assessed the following.

a. **Psychiatric report** for A.A., from Department of Psychiatry of the University Clinical Centre of Kosovo, dated 09 January 2009 (psychiatric examination conducted based on the order of Mitrovicë/Mitrovica District Court 17 November 2008) stated that A.A. has no psychopathological presence and there is no psychic disorder. Also, another **Psychiatric report** for A.A., from Clinic of Psychiatry of the University Clinical Centre of Kosovo, dated 17 June 2010 (psychiatric examination conducted based on the order of Mitrovicë/Mitrovica District Court 29 April 2010) confirmed that A.A. neither has suffered previously nor suffers currently from mental disorder of psychiatric quality, and there is no lack in his development.

In view of aforementioned two Psychiatric reports, the trial panel found that there was no evidence suggesting that accused's criminal liability for the offence committed on 20 October 2008 could be excluded, according to Article 12 of PCKK, due to mental incompetence, or that his criminal liability could be affected by diminished mental capacity.

b. According to the last Psychiatric report at the time of commission of criminal offence on 20 October 2008, and also currently A.A. suffers from personality disorder, ICD 10. In the Psychiatric report the following characteristics were attributed to A.A.: unsocial personality, with low level of tolerance in frustrating situations, undertaking violent acts in the surrounding environment, by demonstrating uncontrolled behavior, constantly suspicious. The Psychiatric report also stated that A.A. presents a recidivist tendency of violent behavior against people who surround him. The trial panel stresses that personality disorder is to be distinguished from mental illness, and therefore cannot be considered for purposes of Article 12 of PCKK.

²³ Minutes of the main trial session 15 July 2010, p.5 (in English language)

VI. CONCLUSIONS ON THE FACTS AND LAW

6.1. *Regarding the charge of Attempted Aggravated Murder in the Indictment*

The Indictment PP No. 112/08, dated 13 January 2009, charged the accused with Aggravated Attempted Murder under Article 147 Item 4 as read with Article 20 of the CCK.

To qualify the act of A.A. under Article 147 Item 4 as read with Article 20 of the PCKK, it must be established that A.A. attempted to deprive B.A. of her life, and in doing so *intentionally* endangered the life of one or more persons. Accordingly, the wording of Article 147 Item 4 of PCKK requires that it must have been an *intention* of A.A. to endanger the life of other person(s). However, the circumstances of the case do not identify that A.A., while attempting to deprive his wife of life, was aware that he is attacking his wife in such a way and in such circumstances, which create a realistic threat not only to the life of B.A. but also to the life of other person(s). For example, means of attack, which could be considered as endangering the life of other person(s) include murder by using explosives, causing fire, landslide, floods, collapse of a building in places, where besides the victim there are also other person(s), or by causing an accident of a vehicle, in which there are other person(s), or shooting at a victim in the crowd or in close distance to other person(s), or by poisoning the water or food, which besides the victim is used by others. In particular circumstances it is opinion of the trial panel that the way, in which A.A. attempted to murder his wife, by stabbing with a penknife, were not such that he also *intended* to endanger the life other person(s).

Therefore, the trial panel considered that the act of A.A. did not qualify as Attempted Aggravated Murder under Article 147 Item 4 as read with Article 20 of the PCKK, which was proposed by the Prosecutor in the Indictment PP No. 112/08.

6.2. *The legal qualification of act of A.A.*

a. The trial panel considered that act committed by the accused A.A. against his wife be qualified as Attempted Murder under Article 146 in conjunction with Article 20 of the PCKK.

Article 20 of the PCKK defines Attempt as intentional immediate action taken toward the commission of an offence, where the action is not completed or the elements of the intended offence are not fulfilled.

In view of Articles 146 and 20 of the PCKK, an Attempt to commit Murder must be immediate *intentional action toward depriving another person of his/her life*.

To determine the intent of the accused A.A., the trial panel considered the way in which the accused committed the offence, the tool which was used by the accused, the characteristics of the injuries caused to his wife B.A., and the reasons, why the offence was not completed. Based on these considerations, the evidence, assessed in this judgment above, indicated the following:

- In the evening of 20 October 2008, at around 20:30 hrs the accused A.A. in his house, in M Village, Vushtrri/Vučitrn Municipality, pulled out a penknife, unfolded it and attacked with it his wife. In that moment he was unable to implement his objective because their sons C.A. and D.A. intervened. Also the accused's father E.A. was woken up and intervened but was pushed away by the accused. Therefore, at this point three (3) persons had actively tried to prevent the accused from attacking B.A.
- Having not implemented his objective at his house, A.A. followed his wife to the house of his brother F.A., which is 100 meters away from his house. The chasing of B.A. for 100 meters, after overcoming the efforts of three (3) persons in stopping him, clearly indicates that A.A. persistently continued to pursue his objective. A.A. was carrying the penknife with him all the way to the house of F.A.
- Immediately after A.A. at the house of F.A. reached B.A., he continued to implement his objective by stabbing B.A. with the knife. He continued to implement his objective irrespective of his son C.A. intervening between him and his mother at the house of F.A.

The above mentioned circumstances indicate that A.A. took immediate intentional action toward commission of an offence.

Based on further considerations the trial panel established that the above described immediate *intentional* action was taken by A.A. toward depriving his wife of life:

- A.A. used against his wife a knife. It is a general knowledge that knife is a weapon by which deadly injuries can be caused.
- A.A. with the knife stabbed his wife in the upper part of her body, where the vital organs are. He stabbed her in the region of forehead, in the region of shoulder blade and in the region of left shoulder. The location of the injury on the forehead identifies that object of the accused's attack was his wife's life. Many vital organs are located in that area. As testified by Dr. S.S. even if the injury on the head of B.A. itself was not dangerous, its location was.

- A.A. caused also injuries to his son C.A. while C.A. was protecting his mother from the attack at the house of F.A. The fact that A.A. stabbed his son identifies that A.A. continued to stab also when his son intervened. A.A. persistently continued to stab. It is opinion of the trial panel that intervention by C.A. did not allow A.A. to completely realize his objective, to deprive his wife of life, by inflicting deadly injuries with the knife.
- The conclusion that object of the accused's attack on his wife B.A. was his wife's life is reached also in view of fact that the only reason why A.A. eventually stopped stabbing his wife was because his son C.A. together with his brother F.A. managed to grab him, in that way interrupting the accused continuing to stab his wife. However, even before A.A. was stopped, he had made in total five injuries causing stabs- three on his wife, and two on his son.

Therefore, the trial panel concluded that accused A.A. took immediate *intentional* action toward depriving his wife of life. The accused's intent remained uncompleted because of intervention by his son C.A. and his brother F.A.

Accordingly, the act committed by the accused A.A. against his wife B.A. was qualified as Attempted Murder under Article 146 in conjunction with Article 20 of the PCCK.

b. The trial panel considered that the act committed by the accused A.A. against his son C.A. be qualified as Light Bodily Injury, under Article 153 Paragraph (4) as read with Paragraph (2) and Paragraph (1) Item 1) of the PCCK.

It was established that:

- A.A. stabbed his son C.A., by causing cut wounds to his right shoulder and his upper inner side of the right thigh. These injuries were caused while C.A. intervened to protect his mother from the attack by his father A.A., starting at their house and continuing in the house of F.A. These injuries were such that they temporarily damaged a part of the body of C.A.
- Even if it was not direct intent of the accused A.A. to stab his son C.A., the accused was aware that it can occur that, as a result of the accused continuing to stab his wife, he can also injure his son C.A. who continued to intervene and protect his mother from the attack. Irrespective of C.A. trying to stop A.A. from attacking B.A., the accused A.A. continued to stab, thereby acceding to causing injuries also to his son C.A.

- Further, the light bodily injury was caused to C. A. , with a knife, which is a weapon by which a serious bodily injury or a serious impairment to health can be caused.
- The above described offence was committed by the accused against his son, who is a person with whom accused A. A. has a domestic relationship.

Therefore, in view of aforementioned conclusions the offence against C. A. , was qualified as Light Bodily Injury, under Article 153 Paragraph (4) as read with Paragraph (2) and Paragraph (1) Item 1) of the PCCK.

VII. DETERMINATION OF PUNISHMENT

a. According to Article 146 of the PCCK for the criminal offence of Murder a perpetrator shall be punished by imprisonment of at least five years. Pursuant to Article 38 Paragraph (1) of the PCCK the punishment of imprisonment may not be longer than twenty years. In case of Attempt the punishment shall be no more than three-quarters of the maximum punishment, as per Article 65 Paragraph (2) of the PCCK.

Therefore, for the criminal offence of Attempted Murder under Article 146 in conjunction with Article 20 of the PCCK,- the maximum punishment may not exceed 15 years imprisonment.

b. For the Light Bodily Injury, under Article 153 Paragraph (4) as read with Paragraph (2) and Paragraph (1) Item 1) of the PCCK,- the prescribed punishment is six (6) months to three (3) years imprisonment.

c. According to Article 64 Paragraph (1) of the PCCK, the court shall determine the punishment of a criminal offence within the limits provided for by law for such criminal offence, taking into consideration the purpose of punishment and all the circumstances that are relevant to mitigation or aggravation of the punishment. The trial panel in determining the punishment for the criminal offences took into consideration the following mitigating and aggravating circumstances.

The following mitigating circumstances:

- With respect to both Attempted Murder and Light Bodily Injury, a mitigating circumstance is that parties had reconciled. Even though these statements of the injured parties B. A. and C. A. were critically assessed by the court, they both at the main trial hearing on 12 July 2010 stated that now they would like to continue to live together with the accused A. A.

- With respect to both Attempted Murder and Light Bodily Injury, a mitigating circumstance is that at the time of commission of the offences, on 20 October 2008, the accused A.A. suffered from personality disorder.

The following aggravating circumstances:

- With respect to Attempted Murder, an aggravating circumstance is that Attempted Murder at some point was committed in presence of at least three (3) children (below age of 18) D.A., C.A. and H.A. Evidencing such a violent attack creates traumatizing consequences for children. This is even more traumatizing to D.A. and C.A., as children of a mother, against whom the violent attack was directed.
- With respect to Attempted Murder, an aggravating circumstance is that Attempted Murder was committed with high intensity. The accused A.A. started the offence at his house, then after being interrupted by his family members, continued the attack at the house of F.A., even though followed by his son C.A., who was protecting his mother from the attack.
- With respect to both Attempted Murder and Light Bodily Injury, an aggravating circumstance is that the past conduct of A.A., as testified by the injured parties and witnesses, demonstrates that he had been aggressive and violent towards his family members also before. A.A. was characterized as a short tempered person, who is aggressive towards his family. The fact that accused's family also includes children (below age of 18, prior to 20 October 2008), with whom the accused has domestic relationship, renders this aggressive and violent past conduct even more an aggravating circumstance.
- With respect to Light Bodily Injury, an aggravating circumstance is that A.A. committed Light Bodily Injury against a child (below age of 18, on 20 October 2008).
- With respect to Light Bodily Injury, an aggravating circumstance is that A.A. committed Light Bodily Injury against his son C.A. in circumstances, where C.A. was protecting his mother from the attack.
- With respect to Attempted Murder and Light Bodily Injury, an aggravating circumstance is the behaviour of A.A. after committing the criminal offence. In particular, after the accused attempted to murder his wife and caused light bodily injury to his son, he went home and showed no remorse or concern for their well being, he was calm and had some tea. Furthermore, with respect to Light Bodily Injury, an aggravating circumstance is that after the accused had committed the criminal offence on 20 October 2008 he continued to be violent against his son C.A. and on 18 December 2009 again committed the criminal offence of Light Bodily Injury against C.A.

d. In view of the limits of punishment provided for by PCCK for the Attempted Murder under Article 146 in conjunction with Article 20 of the PCCK, and Light Bodily Injury, under Article 153 Paragraph (4) as read with Paragraph (2) and Paragraph (1) Item 1) of the PCCK, and in view of the mitigating and aggravating circumstances considered above, the following punishment was determined against A.A.:

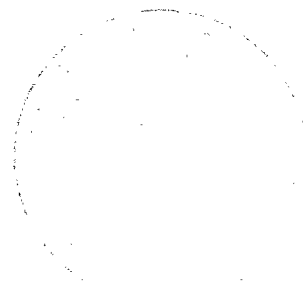
- For Attempted Murder - eight (8) years of imprisonment.
- For Light Bodily Injury - two (2) years of imprisonment.

The aggregate punishment was determined nine (9) years of imprisonment, pursuant to Article 71 Paragraph (1) and Paragraph (2) Item 2 of the PCCK.

e. With respect to purpose of punishment the trial panel deemed that with the determined punishment of imprisonment, both the individual prevention task and general prevention task will be achieved.

First, it was assessed that the aggregate punishment of nine (9) years will prevent the accused from committing criminal offences. A higher term of imprisonment is necessary to achieve this task. This is because the accused has appeared to be aggressive towards his family not only on 20 October 2008, but also before and after 20 October 2008. From the testimonies of injured parties and witnesses it followed that family of A.A. have been suffering from domestic violence inflicted upon them by A.A. in longer period of time. Even though detention on remand was initially imposed against the accused for the offence on 20 October 2008, after being released from detention, he again committed Light Bodily Injury against his son C.A. on 18 December 2009. Therefore, in particular circumstances a longer term of imprisonment is needed to prevent A.A. from committing criminal offences.

Second, the determined punishment of imprisonment will serve the task to deter other persons from committing criminal offences. A.A. attacked his wife and attempted to murder her, while causing light bodily injury to his son, because he could not find a marriage certificate at home. **The trial panel stresses that no such motive (reason) can serve even to the slightest extent in attempts to justify such treatment of a spouse and child. Such treatment of a spouse and children is not acceptable in a civilized society and shall not be tolerated. Therefore, the purpose of the imposed punishment is to raise awareness in society for human and civilized treatment of a spouse and children, and is to send a strong message to society that such treatment of a spouse and children shall be punished accordingly.**



VIII. COSTS OF CRIMINAL PROCEEDINGS

As the court found the accused *A.A.* guilty, he shall reimburse the costs of criminal proceedings pursuant to Article 102 Paragraph (1) of the CPCK with the exception of the costs of interpretation and translation. A separate ruling on the amount of the costs shall be rendered by the court when such data is obtained pursuant to Article 100 Paragraph (2) of the CPCK.

District Court of Mitrovicë/Mitrovica
P No. 06/09

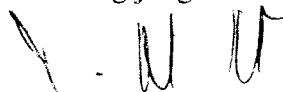
Prepared in English, an authorized language.

Recording officer:



Zane Ratniece
EULEX Legal Officer

Presiding judge:

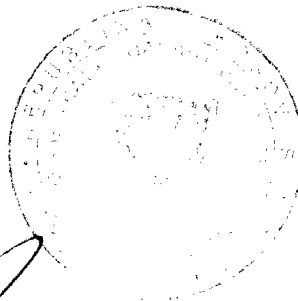


Hajnalka Veronika Karpati
EULEX Judge

Panel members:



Charles L. Smith, III
EULEX Judge



Nikolay Entchev
EULEX Judge

Legal remedy: Authorized persons may file an appeal in written form against this judgment to the Supreme Court of Kosovo through the District Court of Mitrovicë/Mitrovica within fifteen (15) days from the date the copy of the judgment has been received, pursuant to Article 398 Paragraph (1) of the CPCK.

